

**PUEBLO OF LAGUNA CODE**  
**CHAPTER 7. SEXUAL ASSAULT**

**Section 15-7-1. Purpose.**

A. The purpose of this Chapter is:

- (1) To proscribe sexual conduct that causes or threatens substantial harm to individuals residing within the Pueblo of Laguna;
- (2) To give fair warning of proscribed conduct and its related sentencing upon conviction; and
- (3) To promote public safety through deterrence based upon conviction and proper sentencing.

**Section 15-7-2. Definitions.**

A. *Attempt* means the intentional and overt taking of a substantial step toward the commission of a sexual assault crime that falls short of completing the sexual assault crime.

B. *Child* means, for the purposes of the criminal sexual assault chapter, a person who is (14) fourteen years or younger.

C. *Child Pornography* means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

- (1) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
- (2) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or
- (3) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

D. *Counselor or therapist* means a physician, psychologist, nurse, professional counselor, social worker, marriage or family therapist, alcohol or drug counselor, member of the clergy, or any other person, whether or not licensed or registered by the tribe or state, who provides or purports to provide mental health services.

E. *Custody or Control* means temporary supervision over or responsibility for a minor whether legally or illegally obtained.

F. *Defendant* means a person accused in a criminal sexual assault proceeding.

G. *Graphic* means when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted.

H. *Health Professional* means an individual who is licensed or who holds himself or herself out to be licensed, or who otherwise provides professional physical or mental services, diagnosis, treatment, or counseling including, but not limited to, a physician, nurse, dentist, physical therapist, mental health therapist, social service worker, social worker, counselor, or therapist.

I. *Identifiable Minor* means a person:

- (1) who was a minor at the time the visual depiction was created, adapted, or modified; or
- (2) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and
- (3) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

Shall not be construed to require proof of the actual identity of the identifiable minor.

J. *Indistinguishable* means, with respect to a depiction, means virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. This definition does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults.

K. *Intimate Parts* means parts of the human body in the primary genital area, groin, inner thigh, buttock, and breast.

L. *Mental Disease or Defect* means a disorder in thought or mood so substantial that it renders a person incapable of appraising the nature of his or her conduct.

M. *Minor* means, for the purposes of the criminal sexual assault chapter, a "minor" is a person who is eighteen (18) years or younger.

N. *Official detention* means:

- (1) Detention by a POL or federal officer or employee, or under the direction of a POL or federal officer or employee, following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance, or pending extradition, deportation, or exclusion; or

- (2) Custody by a POL or federal officer or employee, or under the direction of a federal officer or employee, for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation;
- (3) But does not include supervision or other control (other than custody during specified hours or days) after release on bail, probation, or parole, or after release following a finding of juvenile delinquency.
- (4) Personal Injury: A bodily injury, however slight or impermanent, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.

O. *Organization* means a person other than an individual;

P. *Prison* means a correctional, detention, or penal facility.

Q. *Producing* means producing, directing, manufacturing, issuing, publishing, or advertising;

R. *Religious Counselor* means a medicine man, minister, priest, or anyone with cultural/ religious authority in the community.

S. *Serious bodily injury* means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

T. *Sexual act* means:

- (1) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;
- (2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- (3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- (4) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of sixteen (16) years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

U. *Sexual Assault* or *Domestic Violence Advocate* means a person, including Family Services advocates, whose primary purpose is the rendering of advice, counseling, and assistance to victims of sexual assault and domestic violence. To qualify as an advocate under this section a person must have completed at least (40) forty hours of approved training.

V. *Sexual contact* means any intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

W. *Sexual Penetration* means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

X. *Sexually Explicit* means:

(1) Except as provided in subparagraph (2), "sexually explicit conduct" means actual or simulated:

- (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
- (b) bestiality;
- (c) masturbation;
- (d) sadistic or masochistic abuse; or
- (e) lascivious exhibition of the genitals or pubic area of any person.

(2) For purposes of subsection 15-7-8, "sexually explicit conduct" means:

- (a) graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited;
- (b) graphic or lascivious simulated;
- (c) bestiality;
- (d) masturbation;
- (e) sadistic or masochistic abuse; or
- (f) graphic or simulated lascivious exhibition of the genitals or pubic area of any person.

Y. *State* means a State of the United States, the District of Columbia, and any commonwealth, possession, or territory of the United States.

Z. *Temporarily Incapacitated* means a person who is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a controlled substance, alcohol, anesthetic, or other substance, regardless of the voluntary or involuntary nature or method of consumption or use, or due to any other act committed upon that person with or without his or her consent.

AA. *Victim* means the person, either female or male, alleged to have been subjected to sexual assault.

BB. *Visual Depiction* means includes undeveloped film and videotape, data stored on computer disk, cellular phone, or by any electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format.

CC. *Voluntary consent* means words or overt actions indicating a freely given agreement to the sexual act or contact in question. Voluntary consent is found to be lacking under this chapter when any of the following conditions are present:

- (1) Where the victim expresses lack of consent through words or conduct;
- (2) Where the defendant overcomes the victim through application of physical force or violence;
- (3) Where the defendant is able to overcome the victim through concealment or by the element of surprise;
- (4) Where the victim has knowledge that the defendant is armed with a weapon, or the victim has knowledge that the defendant is armed with any article used or fashioned in a manner to lead the victim to believe it to be a weapon;
- (5) Where the act is accomplished by threatening to retaliate in the present or in the future against the victim or any other person, and the victim believes the defendant has the present ability to execute these threats;
- (6) Where the victim is unconscious, unaware that the act is occurring, temporarily incapacitated, or physically unable to resist;
- (7) Where the defendant knows that as a result of mental disease or defect, the victim is at the time of act, incapable either of appraising the nature of the act or of resisting it;
- (8) Where the victim is a minor, and at the time of the offense the defendant was the victim's parent, stepparent, adoptive parent, legal guardian, godparent, intimate partner of the parent as defined by FPC § 103(4)(b), or occupied a position of special trust in relation to the victim;
- (9) Where the victim is fourteen (14) years of age or older, but younger than eighteen (18) years old, and the defendant is more than three (3) years older than the victim and entices or

coerces the victim to submit or participate, under the circumstances not amounting to the force or threat required under subsection 15-7-3; and

- (10) Where the defendant is a health professional, counselor or therapist, or a religious authority figure or counselor, as those terms are defined above, and the act is committed under the guise of providing professional diagnosis, counseling, treatment, religious ceremonies/obligations, spiritual advisement, and at the time of the act the victim reasonably believes that the act was for medically, religiously, spiritually, or professionally appropriate diagnosis, counseling, or treatment to the extent that the resistance by the victim could not be reasonably be expected to have been manifested.
- (11) Weapon: Any object, although not inherently dangerous, which is used in a way that is likely to cause serious injury or death.
  - (a) Weapons include, without limitation, firearms, whether or not loaded and whether or not capable of being fired, knives, brass knuckles, clubs, iron bars, baseball bats, and any other device capable of causing serious injury.

### **Section 15-7-3. Aggravated Sexual Abuse**

A. *By Force or Threat.* A person commits aggravated sexual abuse if that person, while within the jurisdiction of the Pueblo of Laguna, knowingly causes another person to engage in a sexual act:

- (1) by using force against that other person; or
- (2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or attempts to do so.

B. *By Other Means.* A person commits aggravated sexual abuse if that person, while within the jurisdiction of the Pueblo of Laguna, knowingly:

- (1) renders another person unconscious and thereby engages in a sexual act with that other person; or
- (2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby:
  - (a) substantially impairs the ability of that other person to appraise or control conduct; and
  - (b) engages in a sexual act with that other person; or attempts to do so, shall be penalized according to the maximum allowable sentence under federal law.

C. *With Children.* A person commits aggravated sexual abuse if that person, while within the jurisdiction of the Pueblo of Laguna, knowingly engages in a sexual act with another person who has not attained the age of twelve (12) years, or knowingly engages in a sexual act under the circumstances

described in subsections (A) and (B) of this section with another person who has attained the age of twelve (12) years but has not attained the age of sixteen (16) years (and is at least four (4) years younger than the person so engaging), or attempts to do so, shall be penalized according to the maximum allowable sentence under federal law.

D. *State of Mind Proof Requirement.* In a prosecution under subsection (C) of this section, the Pueblo need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of twelve (12) years.

E. Whoever commits aggravated sexual abuse while within the jurisdiction of the Pueblo of Laguna is guilty of a crime punishable by the maximum penalty allowed under federal law.

#### **Section 15-7-4. Sexual Abuse.**

A. A person commits sexual abuse if that person, while within the jurisdiction of the Pueblo of Laguna, in the jurisdiction of the Pueblo of Laguna, knowingly:

(1) causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or

(2) engages in a sexual act with another person if that other person is:

(a) incapable of appraising the nature of the conduct; or

(b) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act; or attempts to do so.

B. Whoever commits aggravated sexual abuse while within the jurisdiction of the Pueblo of Laguna is guilty of a crime punishable by the maximum penalty allowed under federal law.

#### **Section 15-7-5. Sexual Abuse of a Minor or Ward.**

A. *Of a Minor.* A person commits sexual abuse of a minor or ward if that person, while within the jurisdiction of the Pueblo of Laguna, knowingly engages in a sexual act with another person, or attempts to do so, who:

(1) has attained the age of twelve (12) years but has not attained the age of sixteen (16) years; and

(2) is at least four (4) years younger than the person so engaging.

B. *Of a Ward.* A person commits sexual abuse of a minor or ward if that person, while within the jurisdiction of the Pueblo of Laguna, knowingly engages in a sexual act with another person, or attempts to do so, who is:

(1) in official detention; and

(2) under the custodial, supervisory, or disciplinary authority of the person so engaging.

**C. *Defenses.***

(1) In a prosecution under subsection (A) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence that the defendant reasonably believed that the other person had attained the age of sixteen (16) years.

(2) In a prosecution under this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time married to each other.

**D. *State of Mind Proof Requirement.*** In a prosecution under subsection (A) of this section, the Pueblo need not prove that the defendant knew:

(1) the age of the other person engaging in the sexual act; or

(2) that the requisite age difference existed between the persons so engaging.

**E.** Whoever commits sexual abuse of a minor or ward while within the jurisdiction of the Pueblo of Laguna is guilty of a crime punishable by the maximum penalty allowed under federal law.

**Section 15-7-6. Abusive Sexual Contact.**

**A. *Sexual Conduct in Circumstances Where Sexual Acts Are Punished by This Chapter.*** A person commits abusive sexual contact if that person, while within the jurisdiction of the Pueblo of Laguna, knowingly engages in or causes sexual contact with or by another person, if to do so would violate:

(1) subsection (A), (B) or (C) of section 15-7-3 (Aggravated Sexual Abuse), section 15-7-4 (Sexual Abuse), subsection (A) of section 15-7-5 (Sexual Abuse of a Minor or Ward), subsection (B) of section 15-7-5 (Sexual Abuse of a Minor or Ward), or subsection (C) of section 15-7-3 (Aggravated Sexual Abuse) of this chapter had the sexual contact been a sexual act.

**B. *In Other Circumstances.*** A person commits abusive sexual contact if that person, while within the jurisdiction of the Pueblo of Laguna, knowingly engages in sexual contact with another person without that other person's permission.

**C. *Offenses Involving Young Children.*** If the sexual contact that violates this section is with an individual who has not attained the age of twelve (12) years, the maximum term of imprisonment shall be imposed for the offense.

**F.** Whoever commits abusive sexual contact while within the jurisdiction of the Pueblo of Laguna is guilty of a crime punishable by the maximum penalty allowed under federal law.



## **Section 15-7-7. Mandatory Restitution.**

A. *In General.* Notwithstanding any other section, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

B. *Scope and Nature of Order.*

- (1) **Directions.** The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court.
- (2) **Enforcement.** An order of restitution under this section shall be issued and enforced in accordance with POLC § 15-3-2 (Fines) in the same manner as an order under that section.
- (3) **Definition.** For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for:
  - (a) medical services relating to physical, psychiatric, or psychological care;
  - (b) physical and occupational therapy or rehabilitation;
  - (c) necessary transportation, temporary housing, and child care expenses;
  - (d) lost income;
  - (e) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and
  - (f) any other losses suffered by the victim as a proximate result of the offense.
- (4) **Order mandatory.**
  - (a) The issuance of a restitution order under this section is mandatory.
  - (b) A court may not decline to issue an order under this section because of:
    - i. the economic circumstances of the defendant; or
    - ii. the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.
    - iii. *Definition.* For purposes of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under eighteen (18) years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

## **Section 15-7-8. Sexual Exploitation and Other Abuse of Children**

### **A. *Sexual Exploitation of Children.***

- (1) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or out of the jurisdiction of the Pueblo of Laguna, including but not limited to reservation boundaries and/or state lines, with the intent that such minor engage in, any illicit sexual conduct with another person or sexually explicit conduct, which may include for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (4).
- (2) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct, including for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct shall be punished as provided under subsection (4) of this section.
- (3) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering:
  - (a) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or
  - (b) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct;

Shall be punished as provided under subsection (4).

- (4) Whoever commits, attempts to commit or conspires to commit sexual exploitation of children while within the jurisdiction of the Pueblo of Laguna is guilty of a crime punishable by the maximum penalty allowed under federal law.

### **B. *Certain activities related to material constituting or creating child pornography.***

- (1) A person commits possession of child pornography, distribution of child pornography or creation of child pornography if that person, while within the jurisdiction of the Pueblo of Laguna:
  - (a) knowingly mails, or transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any child pornography;

(b) knowingly receives or distributes:

- i. any child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer; or
- ii. any material that contains child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(c) knowingly:

- i. reproduces any child pornography for distribution through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer; or
- ii. advertises, promotes, presents, distributes, or solicits through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains:
  1. an obscene visual depiction of a minor engaging in sexually explicit conduct; or
  2. a visual depiction of an actual minor engaging in sexually explicit conduct;

(d) either:

- i. within the jurisdiction of or affecting the Pueblo of Laguna, knowingly sells or possesses with the intent to sell any child pornography; or
- ii. knowingly sells or possesses with the intent to sell any child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(e) either:

- i. within the jurisdiction of or affecting the Pueblo of Laguna, knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or

- ii. knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;
  - (f) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct:
    - i. that has been mailed, shipped, or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer;
    - ii. that was produced using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer; or
    - iii. which distribution, offer, sending, or provision is accomplished using the mails or any means or facility of interstate or foreign commerce, for purposes of inducing or persuading a minor to participate in any activity that is illegal; or
  - (g) knowingly produces with intent to distribute, or distributes, by any means, including a computer, in or affecting interstate or foreign commerce, child pornography that is an adapted or modified depiction of an identifiable minor.
- (2) Whoever commits, attempts to commit or conspires to commit possession of child pornography, distribution of child pornography or creation of child pornography while within the jurisdiction of the Pueblo of Laguna is guilty of a crime punishable by the maximum penalty allowed under federal law.

*C. Affirmative Defense.*

- (1) It shall be an affirmative defense to a charge of violating this section that:
  - (a) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and
  - (b) each such person was an adult at the time the material was produced; or
- (2) The alleged child pornography was not produced using any actual minor or minors.

- (3) No affirmative defense under subsection 15-7-3 shall be available in any prosecution that involves child pornography. A defendant may not assert an affirmative defense to a charge unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 10 days before the commencement of the trial, the defendant provides the court and the Pueblo of Laguna with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense or presenting any evidence for which the defendant has failed to provide proper and timely notice.
- (4) It shall be an affirmative defense to a charge of violating subsection (B)(1)(b) of this section that the defendant:
- (a) possessed less than three images of child pornography; and
  - (b) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof:
    - i. took reasonable steps to destroy each such image; or
    - ii. reported the matter to a law enforcement agency and afforded that agency access to each such image.

D. *Admissibility of Evidence.* On motion of the Pueblo of Laguna, in any prosecution under this chapter, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence.

E. *Civil Remedies.*

- (1) *In general.* Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) may commence a civil action for the relief set forth in paragraph (2).
- (2) *Relief.* In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including:
- (a) temporary, preliminary, or permanent injunctive relief;
  - (b) compensatory and punitive damages; and
  - (c) the costs of the civil action and reasonable fees for attorneys and expert witnesses.

F. *Child Exploitation Enterprises.*

- (1) A person commits engaging in a child exploitation enterprise for the purposes of this section if the person, while within the Pueblo of Laguna, violates this chapter using a minor victim, as a part of a series of felony violations constituting three or more separate incidents and involving more than one victim, and commits those offenses in concert with three or more other persons.
- (2) Whoever commits, attempts to commit or conspires to commit engaging in a child exploitation enterprise while within the jurisdiction of the Pueblo of Laguna is guilty of a crime punishable by the maximum penalty allowed under federal law.

**Section 15-7-9. Misleading domain names on the internet.**

- A. A person commits misleading use of a domain name on the internet if that person, while within the jurisdiction of the Pueblo of Laguna:
  - (1) knowingly uses a misleading domain name on the internet with the intent to deceive a person into viewing material constituting obscenity shall be penalized according to the maximum allowable under federal law or;
  - (2) knowingly uses a misleading domain name on the Internet with the intent to deceive a minor into viewing material that is harmful to minors.
- B. For the purposes of this section, a domain name that includes a word or words to indicate the sexual content of the site, such as “sex” or “porn”, is not misleading.
- C. For the purposes of this section, the term “material that is harmful to minors” means any communication, consisting of nudity, sex, or excretion, that, taken as a whole and with reference to its context:
  - (1) predominantly appeals to a prurient interest of minors;
  - (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
  - (3) lacks serious literary, artistic, political, or scientific value for minors.
- D. For the purposes of this subsection, the term “sex” means acts of masturbation, sexual intercourse, or physical contact with a person’s genitals, or the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- E. Whoever commits, attempts to commit or conspires to commit misleading use of a domain name on the internet while within the jurisdiction of the Pueblo of Laguna is guilty of a crime punishable by the maximum penalty allowed under federal law.

**Section 15-7-10. Misleading words or digital images on the internet.**

- A. A person commits misleading use of words or digital images on the internet if that person, while within the jurisdiction of the Pueblo of Laguna:
- (1) knowingly embeds words or digital images into the source code of a website with the intent to deceive a person into viewing material constituting obscenity shall receive the maximum allowable penalty under federal law.
  - (2) knowingly embeds words or digital images into the source code of a website with the intent to deceive a minor into viewing material harmful to minors on the Internet shall receive the maximum allowable penalty under federal law.
- B. *Construction.* For the purposes of this section, a word or digital image that clearly indicates the sexual content of the site, such as “sex” or “porn”, is not misleading.
- C. *Definitions.* As used in this section:
- (1) the terms “material that is harmful to minors” and “sex” have the meaning given such terms in section 15-7-9; and
  - (2) the term “source code” means the combination of text and other characters comprising the content, both viewable and nonviewable, of a web page, including any website publishing language, programming language, protocol or functional content, as well as any successor languages or protocols.
- F. Whoever commits, attempts to commit or conspires to commit misleading use of words or digital images on the internet while within the jurisdiction of the Pueblo of Laguna is guilty of a crime punishable by the maximum penalty allowed under federal law.

**Section 15-7-11. Sex Trafficking of Children or by Force, Fraud or Coercion.**

- A. A person commits sex trafficking of children if that person, while within the jurisdiction of the Pueblo of Laguna and knowingly:
- (1) While in or affecting the Pueblo of Laguna recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or
  - (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or in reckless disregard of the fact that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to

engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

B. The punishment for an offense under subsection (a) is:

- (1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 years at the time of such offense, by the maximum fine sentence allowable under federal law; or
- (2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by the maximum fine and sentence allowable under federal law.

C. In a prosecution under subsection (A)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained or maintained, the Pueblo need not prove that the defendant knew that the person had not attained the age of 18 years.

D. Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this Chapter, and imprisoned for the maximum allowable under federal law, or both.

E. In this section:

- (1) The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.
- (2) The term “coercion” means:
  - (a) threats of serious harm to or physical restraint against any person;
  - (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
  - (c) the abuse or threatened abuse of law or the legal process.
- (3) The term “commercial sex act” means any sex act, on account of which anything of value is given to or received by any person.
- (4) The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the



same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

- (5) The term “venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

#### **Section 15-7-12. Video Voyeurism.**

- A. A person commits video voyeurism if that person, while within the jurisdiction of the Pueblo of Laguna has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy.
- B. In this section:
- (1) the term “capture”, with respect to an image, means to videotape, photograph, film, record by any means, or broadcast;
  - (2) the term “broadcast” means to electronically transmit a visual image with the intent that it be viewed by a person or persons;
  - (3) the term “a private area of the individual” means the naked or undergarment clad genitals, pubic area, buttocks, or female breast of that individual;
  - (4) the term “female breast” means any portion of the female breast below the top of the areola; and
  - (5) the term “under circumstances in which that individual has a reasonable expectation of privacy” means:
    - (a) circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the individual was being captured; or
    - (b) circumstances in which a reasonable person would believe that a private area of the individual would not be visible to the public, regardless of whether that person is in a public or private place.
- C. This section does not prohibit any lawful law enforcement, correctional, or intelligence activity.
- D. Whoever commits, attempts to commit or conspires to commit video voyeurism while within the jurisdiction of the Pueblo of Laguna is guilty of a crime punishable by the maximum penalty allowed under federal law.

### **Section 15-7-13. Soliciting a Minor via Electronic Device.**

A. A person commits solicitation of a minor via electronic device if that person, while within the jurisdiction of the Pueblo of Laguna, solicits, induces, entices, persuades, encourages, offers, or coerces a minor to engage in any sexual activity for which any person can be charged with a criminal offense.

B. Whoever commits, attempts to commit or conspires to commit solicitation of a minor via electronic device while within the jurisdiction of the Pueblo of Laguna is guilty of a crime punishable by the maximum penalty allowed under federal law.

### **Section 15-7-14. Offenses Resulting in Death.**

A. A person who, in the course of an offense under this Chapter, or any other POLC Chapter, murders an individual, shall be punished by the maximum sentence allowable under federal law.

### **Section 15-7-15. Transmitting Information About A Minor.**

A. A person commits transmission of information about a minor if that person, while within the jurisdiction of the Pueblo of Laguna, uses the mail or any facility or means of interstate or foreign commerce, or within the jurisdiction of the Pueblo of Laguna, and knowingly initiates the transmission of the name, address, telephone number, social security number, or electronic mail address of another individual, knowing that such other individual has not attained the age of 16 years, with the intent to entice, encourage, offer, or solicit any person to engage in any sexual activity for which any person can be charged with a criminal offense.

B. Whoever commits, attempts to commit or conspires to commit transmission of information about a minor while within the jurisdiction of the Pueblo of Laguna is guilty of a crime punishable by the maximum penalty allowed under federal law.

### **Section 15-7-16. Criminal Sexual Communication With A Minor.**

A. Criminal sexual communication with a child consists of a person knowingly and intentionally communicating directly with a specific child under sixteen years of age by sending the child obscene images of the person's intimate parts by means of an electronic communication device when the perpetrator is at least four years older than the child.

B. Whoever commits sexual communication with a minor is guilty of a crime punishable by the maximum penalty allowed under federal law.

C. As used in this section:

1. "electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, pager or any other device that can produce an electronically generated image; and
2. "intimate parts" means the primary genital area, groin, buttocks, anus or breasts.

### **Section 15-7-17. Failure to report child abuse.**

A. A person commits failure to report child abuse if that person, while within the jurisdiction of the Pueblo of Laguna and while engaged in a professional capacity or activity described in this chapter and/or subsection (b) of section 226 of the Victims of Child Abuse Act of 1990 on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, as defined in subsection (c) of that section, and fails to make a timely report as required by subsection (a) of that section.

B. Whoever commits, attempts to commit or conspires to commit failure to report child abuse while within the jurisdiction of the Pueblo of Laguna is guilty of a crime punishable by the maximum penalty allowed under federal law.

### **Section 15-7-18. Sentencing**

A. As used in this chapter:

1. “maximum allowable sentence under federal law,” means the maximum penalty allowed pursuant to 25 USCA § 1302(a)(7)(B) and (C). The maximum penalty allowed under 25 USCA § 1302(a)(7)(B) is up to one year of incarceration and a fine of up to \$5,000.00 for any 1 offense. However, 25 USCA § 1302(a)(7)(C) allows for a penalty to be imposed of up to 3 years of incarceration and a fine of \$15,000.00 for any 1 offense up to a maximum of 9 years incarceration once the conditions imposed by 25 USCA § 1302(b) have been met.